

(1978) 03 MP CK 0034

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 328 of 1976 connected with M.P. No"s. 325, 326 and 327 of 1976

Girdharilal Nanhelal and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 06-03-1978

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
Constitution of India, 1950 — Article 131A, 226, 226A, 32

Citation : (1977) ILR (MP) 934 : (1978) JLJ 797 : (1979) 44 STC 368

Hon'ble Judges : P.D. Mulye, J;G.L. Oza, J

Bench : Division Bench

Advocate : K.A. Chitale, for the Appellant; S.K. Nigam, Deputy Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.L. Oza, J.—This petition and Misc. Petitions Nos. 325, 326 and 327 of 1976 have been filed by the petitioners challenging the assessment orders for the years 1960-61, 1961-62, 1962-63 and 1963-64. The question involved is identical and, therefore, this order will govern the disposal of all the four petitions.

2. It is alleged by the petitioners that they are a partnership firm carrying on business at Burhanpur and petitioners Nos. 2 to 6 are partners in the said firm. The firm deals in cotton, cotton-seed, cotton-seed oil and oilcakes. It is registered under the Madhya Pradesh General Sales Tax Act and the Central Sales Tax Act. According to the petitioners, they buy raw cotton "kapaas", get it ginned and pressed into bales by others, who own ginning and pressing factories. The petitioners pay ginning and pressing charges to these factories and sell full pressed bales within the State and outside.

3. The petitioner-firm has been assessed to pay sales tax both under the State Act and the Central Act for the period commencing from 18th October, 1963, to

4th November, 1964. For the aforesaid period, respondent No. 4, who is the assessing officer, determined the gross turnover at Rs. 1,43,84,771.00 and the tax has been levied on the break-up as below:

(1) Sales of fully pressed cotton bales without C form taxable at 1 per cent Rs. 1,42,45,896.00 (2) Sales of Hessian without C form and hoops taxable at 10 per cent--tax Rs. 13,887.50 Rs.1,38,875.00

Rs.1,43,84,771.00

The petitioners have by this petition challenged the levy of sales tax on item No. (2) above.

4. It is alleged by the petitioners that when the petitioners purchase raw cotton and get it ginned and pressed, they pay the ginning and pressing charges per khandi of cotton but do not pay anything for the bardana, hessian and hoops, which the pressing factory uses for pressing the bales. It is also alleged that the petitioners receive orders for supply of specified number of fully pressed cotton bales and they supply such bales to the buyers. But the price quoted is per khandi of cotton and not per bale and, in determining the price, the bales are weighed and the standard weight of hessian and hoops is deducted from the weight of each bale and, on the basis of the weight of cotton, bills are made, according to the price per khandi of cotton, and no price is charged for hessian and hoops by the petitioners. It is also alleged that, while determining the selling rates of cotton, the price of raw cotton and pressing and ginning charges are also taken into consideration. It is therefore contended in these petitions that, although the agreement was to sell fully pressed cotton bales, there was no specific or implied agreement for sale of the packing material.

5. Respondent No. 2, the Regional Assistant Commissioner of Sales Tax, who was the assessing officer, has estimated the price of hessian and hoops at Rs. 5.50 per bale and as he found that 25,250 bales had been sold, he estimated the price of the packing material and assessed the tax at 10 per cent.

6. Against this order, the petitioners filed a revision petition which was heard and decided by respondent No. 3, who, by his order dated 29th November, 1971, reduced the tax on hoops to 2 per cent, but otherwise dismissed the revision petition. Respondent No. 3 held that hessian and hoops were supplied under the contract of sale of goods.

7. In the return filed by the respondents, the facts mentioned in paragraphs 1 and 2 of the petition are admitted; but, in reply to paragraph 3, it is alleged that, when the pressing factories charge the pressing charges, they include the price of the packing material. It is further contended in the return that, as the contract for sale of fully pressed cotton bales is entered into, the packing material used by the pressing factory also is sold along with the bales. It is also alleged that the selling rate of cotton bales includes the pressing charges and, therefore, also includes the price of the packing material. It is not denied in the return that the

price quoted or settled is per khandi of cotton and, while determining the price, the petitioner-assessee deducted the standard weight of the packing material from the weight of the bale and, on the balance, the price of cotton was determined with regard to the rate of cotton per khandi.

8. Looking to the petition and the return, it is clear that it is not the case of either party that the price of cotton bales fully pressed was quoted as price per bale and it was not determined on the basis of the weight of cotton but determined only on the number of bales or the weight of bales as they were.

9. It was contended on behalf of the petitioners that, in view of these facts which emerge from the petition and the return, it is not disputed that the price quoted in the contracts is the price of cotton per khandi and, while determining the price, the standard weight of packing material is deducted from the weight of each bale, and it is only on that basis that the price of cotton sold is calculated. This, according to the Learned Counsel, clearly indicates that there is no contract of sale of the packing material either express or implied and, in the absence of that, it could not be said that the packing material also is sold and the assessment made on that basis is not justified. The Learned Counsel for the petitioner in support of his contention placed reliance on the decision reported in *Binod Mills Co. Ltd. v. Commissioner of Sales Tax*, M.P. [1972] 29 S.T.C. 413. In the alternative, it was also contended that u/s 14(ii) of the Central Sales Tax Act, 1956, "cotton" has been defined to mean cotton, whether ginned or unginned, baled, pressed or otherwise; and, therefore, even if it is held that it is a transaction of sale of cotton bales as such, that would fall within the ambit of the definition of Clause (ii) of Section 14 and it could only be taxed at the rate provided for cotton; and hessian and hoops could not be separately assessed.

10. The Learned Counsel for the respondents placed reliance on the decisions reported in *Vimalchand v. Commissioner of Sales Tax*, M.P. [1968] 22 S.T.C. 22, *Nimar Cotton Press v. Sales Tax Officer, Nimar Circle* [1961] 12 S.T.C. 313 (F.B) and *M.S. Chidambara Nadar v. State of Madras* [1960] 11 S.T.C. 321, and contended that the sale of cotton bales fully pressed implies a contract of sale of pressing material as well. He also placed reliance on the decisions reported in *Hyderabad Deccan Cigarette Factory v. State of Andhra Pradesh* [1966] 17 S.T.C. 624 (S.C.) and *Bhagwandas v. Commissioner of Sales Tax*, M.P. [1978] 41 S.T.C. 387 (Misc. Civil Case No. 147 of 1972 D/Jabalpur decided on 8th January, 1976). As regards the second contention, the Learned Counsel contended that "cotton" as defined in Section 14(ii) would only mean cotton and not hessian and hoops although the cotton may be fully pressed.

11. In *Hyderabad Deccan Cigarette Factory v. State of Andhra Pradesh* [1966] 17 S.T.C. 624 (S.C.), their Lordships of the Supreme Court were considering the taxability of the packing material and it was observed:

We have, therefore, no option but to remand the case to the High Court to consider the question whether, having regard to the facts of the case and the

observations made by us, there was an agreement, express or implied, between the assessee and its customers to sell the packing materials or whether the packing materials, which were comparatively of insignificant value, were used only as a convenient vehicle to put the purchasers in possession of the cigarettes sold.

It is this principle which has been applied in all the cases cited by either party. In *M.S. Chidambara Nadar v. State of Madras* [1960] 11 S.T.C. 321, on which reliance has been placed by the Learned Counsel for the respondents, it was observed:

It cannot be disputed having regard to the findings arrived at by the Tribunal that the last three conditions have been satisfied in the present case. The question then is, whether there has been an agreement between the parties for the purpose of transferring title in the packing materials. When there is an agreement to purchase cotton to be delivered by the seller to the buyers, it is implicit in the contract that the goods should be delivered as packed. We can, therefore, imply that there is a contract to pay for and purchase the packing materials as well.

12. It is therefore clear that in this decision the facts found led to an inference that the sale of cotton included the sale of the packing material as well. The decisions of this Court reported in *Nimar Cotton Press v. Sales Tax Officer* [1961] 12 S.T.C. 313 (F.B.) and *Vimalchand v. Commissioner of Sales Tax, M.P.* [1968] 22 S.T.C. 22, and the decision in *Bhagwandas v. Commissioner of Sales Tax, M.P.* [1978] 41 S.T.C. 387 (Misc. Civil Case No. 147 of 1972), referred to above, are cases where an inference has been drawn of an implied contract of sale of the packing material and, in none of these cases, it was found as a fact that the price of cotton was quoted per khandi and, while determining the price of cotton, the standard weight of the packing material was deducted and the price of cotton was determined on the basis of the balance of the weight. It could not be doubted that, in the absence of these specific facts alleged in the present petition and not disputed by the respondents in the case of sale of cotton bales, it could be inferred that whatever is included in the bale including the packing material also is sold and an implied contract could be inferred; and it was, in fact, in all those cases relied upon by the respondents, inferred.

13. In *Binod Mills Co. v. Commissioner of Sales Tax, M.P.* [1972] 29 S.T.C. 413, a similar situation has been considered. In that case, it was alleged that, although pressed bales of cloth were sold, but, while determining the price, the quantity of cloth was determined and, on the basis of the length of cloth, the price was calculated. And, in that context, it was held that there was no implied contract of sale of the packing material. The cases on which reliance has been placed by the Learned Counsel for the respondents before me were also relied upon in that case and, after referring to *Hyderabad Deccan Cigarette Factory v. State of Andhra Pradesh* [1966] 17 S.T.C. 624 (S.C.), their Lordships observed:

Now, the facts in the instant case are that the sale of cloth in large quantities, as was made by the dealer, could only be made in bales. Bardana and iron hoops formed convenient and cheap packing material for transporting the goods to the customers. No separate price was charged for the packing material. The price was charged for the cloth either on the basis of meterage or on the basis of weight of the cloth. The price charged for the cloth bore no relation to the value of the packing material. A sample receipt, enclosed along with the order of reference, showed that the price of one bale of cloth roughly came to Rs. 1,500. Compared to that, the value of the packing material of Rs. 4 per bale, as fixed by the assessing authority, was so insignificant that it was not possible to draw any inference that the dealer intended to sell the packing material to the customers. The burden lay upon the department to prove that there was an implied sale of the packing material liable to tax. On the material on record and on the facts found by the Tribunal, it cannot be held that the department succeeded in discharging that burden. Reference in this connection may be made to *Shamsuddin Akbar Khan and Co. v. State of Orissa* [1970] 26 S.T.C. 280, where the Orissa High Court took similar view in relation to the containers used for transporting tax-free gudaku. Similar view was expressed by the Allahabad High Court in *Burhwal Sugar Mills Co. Ltd. v. Sales Tax Officer* [1969] 23 S.T.C. 241, where the question related to gunny bags in which sugar was sold.

It was on these special facts of that case, their Lordships held that there was no implied sale of the packing material.

14. It is thus clear that, on the facts that emerge in this petition, no inference could be drawn of an implied contract of sale of the packing material. Admittedly, there is no express contract of sale of the packing material and, therefore, the assessment made, in item No. (2) quoted above, on the sale of the packing material could not be justified.

15. The alternative contention advanced by the Learned Counsel for the petitioner, in our opinion, is not material for the decision of the present case. That question may arise when, admittedly, the cotton is sold in bales and the price is determined on the basis of the number of bales only; and, in that context, it could be contended that "cotton" means that as defined in Clause (ii) of Section 14 of the Act. But, in the facts of this case, as it is the petitioner's own case that although cotton was sold in fully pressed bales, but the price quoted and charged was on the basis of the weight of cotton after deducting the weight of the packing material and thus what was sold was cotton alone. On these facts, in our opinion, it is not necessary for us to decide the alternative contention pressed by the Learned Counsel for the petitioner.

16. It was also contended by the Learned Counsel for the respondents that this is a petition under Article 226 of the Constitution and it could not be entertained in view of the amended Article 226, as it stands today. This article reads:

226. (1) Notwithstanding anything in Article 32 but subject to the provisions of

Article 131A and Article 226A, every High Court shall have power . . . to issue to any person or authority . . . directions, orders or writs, . . .

(a) . . .

(b) for the redress of any injury of a substantial nature by reason of the contravention of any other provision of this Constitution or any provision of any enactment or Ordinance or any order, rule, regulation, bye-law or other instrument made thereunder; or

(c) for the redress of any injury by reason of any illegality in any proceedings by or before any authority under any provision referred to in Sub-clause (b) where such illegality has resulted in substantial failure of justice. . . .

Apparently, what is taxable under the Act is tax on sales and, if there is any tax levied which does not fall within the ambit of sale, it will be in contravention of the provisions of the Act. It could not be disputed that this has resulted in an injury to the petitioner. Thus, the petition squarely falls within the ambit of Article 226(1)(b) of the Constitution.

17. In the light of the discussion above, therefore, the petition is allowed and the assessment with regard to item No. (2) quoted above is set aside. The petitioners shall be entitled to the costs of this petition; counsel's fee Rs. 200 (two hundred), if certified. Security amount be refunded to the petitioners after verification.